COMMISSION DIRECTIVE 2000/52/EC

of 26 July 2000

amending Directive 80/723/EEC on the transparency of financial relations between Member States and public undertakings

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular Article 86(3) thereof,

Whereas:

(1) Commission Directive 80/723/EEC [1], as last amended by Directive 93/84/EEC [2], requires Member States to ensure that financial relations between public authorities and public undertakings are transparent. Directive 80/723/EEC requires certain financial information to be retained by Member States and supplied to the Commission when requested, while other information has to be supplied in the form of annual reports.

(2) Various sectors of the economy which were characterised in the past by the existence of national, regional or local monopolies have been or are being opened partly or fully to competition in application of the Treaty or by rules adopted by the Member States and the Community. This process has highlighted the importance of ensuring that the rules on competition contained in the Treaty are fairly and effectively applied in these sectors, in particular that there is no abuse of a dominant position within the meaning of Article 82 of the Treaty, and no State aid within the meaning of Article 87 of the Treaty unless it is compatible with the common market, without prejudice to the possible application of Article 86(2) of the Treaty.

(3) In such sectors Member States often grant special or exclusive rights to particular undertakings, or make payments or give some other kind of compensation to particular undertakings entrusted with the operation of services of general economic interest. These undertakings are often also in competition with other undertakings.

(4) According to Article 86(2) and (3) of the Treaty it is, in principle, for the Member States to entrust certain undertakings with the operation of services of general economic interest that they define, the Commission being responsible for ensuring the proper application of the provisions of that Article.

(5) Article 86(1) of the Treaty requires that, in the case of public undertakings and undertakings to which Member States grant special or exclusive rights, Member States must neither enact nor maintain in force any measure contrary to the rules contained in the Treaty. Article 86(2) of the Treaty applies to undertakings entrusted with the operation of services of general economic interest. Article 86(3) of the Treaty requires the Commission to ensure the application of the provisions of Article 86 and to address appropriate directives or decisions to Member States. The interpretative provisions annexed to the Treaty by the Protocol on the system of public broadcasting in the Member States state that the provisions of the Treaty establishing the European Community shall be without prejudice to the competence of the Member States to provide for the funding of public service broadcasting in so far as such funding is granted to broadcasting organisations for the fulfilment of the public service remit conferred, defined and organised by each Member State, and in so far as such funding does not affect trading conditions and competition in the Community to an extent which would be contrary to the common interest, while the realisation of the remit of that public service shall be taken into account. In order to ensure the application of the provisions of Article 86 of the Treaty the Commission must have the necessary information. This entails defining the conditions for achieving transparency.

(6) Complex situations linked to the diverse forms of public and private undertakings granted special or exclusive rights or entrusted with the operation of services of general economic interest as well as the range of activities that might be carried on by a single undertaking and the different degrees of market liberalisation in the various Member States could complicate application of the competition rules, and particularly Article 86 of the Treaty. It is therefore necessary for Member States and the Commission to have detailed data about the internal financial and organisational structure of such undertakings, in particular separate and reliable accounts relating to different activities carried on by the same undertaking. Such information is not always available or is not always sufficiently detailed or reliable.

(7) Such accounts should show the distinction between different activities, the costs and revenues associated with each activity and the methods of cost and revenue assignment and allocation. Such separate accounts should be available in relation to, on the one hand, products or services in respect of which the Member State has granted a special or exclusive right or entrusted the undertaking with the operation of a service of general economic interest, as well as, on the other hand, for each other product or service in respect of which the undertaking is active. The obligation of separation of accounts should not apply to undertakings whose activities are limited to the provision of services of general economic interest and which do not operate activities outside the scope of these services of general economic

[1] OJ L 195, 29.7.1980, p. 35.
[2] OJ L 254, 12.10.1993, p. 16.

interest. It does not seem necessary to require separation of accounts within the area of services of general economic interest or within the area of the special or exclusive rights, as far as this is not necessary for the cost and revenue allocation between these services and products and those outside of the services of general economic interest or the special or exclusive rights.

(8) Requiring Member States to ensure that the relevant undertakings maintain such separate accounts is the most efficient means by which fair and effective application of the rules on competition to such undertakings can be assured. The Commission has adopted a Communication on services of general interest in Europe [1] in which it emphasises their importance. It is necessary to take account of the importance of the sectors concerned, which may involve services of general interest, the strong market position that the relevant undertakings may have and the vulnerability of emerging competition in the sectors being liberalised. In accordance with the principle of proportionality it is necessary and appropriate for the achievement of the basic objective of transparency to lay down rules on such separate accounts. This Directive confines itself to what is necessary in order to achieve the objectives pursued in accordance with the third paragraph of Article 5 of the Treaty.

(9) In certain sectors provisions adopted by the Community require Member States and certain undertakings to maintain separate accounts. It is necessary to ensure an equal treatment for all economic activities throughout the Community and to extend the requirement to maintain separate accounts to all comparable situations. This Directive should not amend specific rules established for the same purpose in other Community provisions and should not apply to activities of undertakings covered by those provisions.

(10) In view of the limited potential impact on competition and in order to avoid imposing an excessive administrative burden it is not necessary, at this time, to require enterprises with a total annual net turnover of less than EUR 40 million to maintain separate accounts. In view of the limited potential for an effect on trade between Member States, it is not necessary, at this time, to require separate accounts in relation to the supply of certain categories of services. This Directive should apply without prejudice to any other rules concerning the provision of information by Member States to the Commission.

(11) In cases where the compensation for the fulfilment of services of general economic interest has been fixed for an appropriate period following an open, transparent and non-discriminatory procedure it does not seem necessary at this time to require such undertakings to maintain separate accounts.

(12) Article 295 of the Treaty provides that the Treaty is in no way to prejudice the rules in Member States governing the system of property ownership. There should be no unjustified discrimination between public and private undertakings in the application of the rules on competition. This Directive should apply to both public and private undertakings.

(13) The Member States have differing administrative territorial structures. This Directive should cover public authorities at all levels in each Member State.

(14) Directive 80/723/EEC should therefore be amended accordingly,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Directive 80/723/EEC is amended as follows:

1. The title is replaced by the following:

'Commission Directive 80/723/EEC of 25 June 1980 on the transparency of financial relations between Member States and public undertakings as well as on financial transparency within certain undertakings.'

2. Articles 1 and 2 are replaced by the following:

'*Article 1*

1. The Member States shall ensure that financial relations between public authorities and public undertakings are transparent as provided in this Directive, so that the following emerge clearly:

(a) public funds made available directly by public authorities to the public undertakings concerned;

(b) public funds made available by public authorities through the intermediary of public undertakings or financial institutions;

(c) the use to which these public funds are actually put.

2. Without prejudice to specific provisions laid down by the Community the Member States shall ensure that the financial and organisational structure of any undertaking required to maintain separate accounts is correctly reflected in the separate accounts, so that the following emerge clearly:

(a) the costs and revenues associated with different activities;

(b) full details of the methods by which costs and revenues are assigned or allocated to different activities.

[1] OJ C 281, 26.9.1996, p. 3.